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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY; and ALLSTATE PROPERTY AND CASUALTY INSURANCE COMPANY, Plaintiffs, vs. TOM M. HARPER, II, an individual; JOHN DAVID HUNT, an individual; DOES I through X, inclusive; and ROE BUSINESS ENTITIES I through X, inclusive, Defendants.	CASE NO.: COMPLAINT FOR DECLARATORY RELIEF

Plaintiffs, Allstate Fire and Casualty Insurance Company and Allstate Property And Casualty Insurance Company, by and through their attorneys, KEATING LAW GROUP, allege and claim as follows:

1. Allstate Fire and Casualty Insurance Company and Allstate Property and Casualty Insurance Company, are and was at all times relevant to these proceedings, Illinois corporations, incorporated in the State of Illinois, licensed to do business in the State of Nevada, with its principal place of business in Illinois.

2. Defendant TOM M. HARPER, II ("Harper") is and was at all times relevant to these proceedings, an individual residing in El Paso County, State of Colorado.

3. Defendant John David Hunt ("Hunt") is and was, during times relevant to these proceedings, an individual residing in Washoe County, State of Nevada.

4. Hunt has asserted claims against Harper and therefore has an interest in the outcome herein.

5. Jurisdiction is properly before this Court pursuant to 28 U.S.C. §1332 based upon complete diversity of citizenship and the amount in controversy exceeding $75,000.00.

6. The claims asserted with this Complaint arise under the Federal Declaratory Act pursuant to 28 U.S.C. §2201. The Court has jurisdiction over the subject matter of such claims pursuant to 28 U.S.C. §§1331 and 1337.

7. The names and capacities, whether individuals, corporate, associate or otherwise of Defendants named herein as DOE and ROE CORPORATION are unknown or not yet confirmed. Upon information and belief, said DOE and ROE CORPORATION Defendants are responsible for damages suffered by Plaintiff and, therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiff will ask leave to amend this Complaint to show the true names and capacities of each DOE and ROE CORPORATION Defendant at such times as the same has been ascertained.

GENERAL ALLEGATIONS

8. Upon information and belief, Hunt filed a Complaint for personal injuries on or about November 4, 2014, in the Second Judicial District, Washoe County, Nevada, naming Harper as the sole defendant, in case No. CV14-02334.

9. Hunt's complaint alleges a single cause of action for negligence against Harper.

10. Hunt's complaint alleges that on March 3, 2013, Hunt was driving on Veterans Pkwy when he observed a vehicle in the left lane proceeding at an approximate speed of 20-

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25 miles per hour. The speed limit on Veterans Pkwy is 45 miles per hour.

11. Hunt's complaint further alleges that Hunt attempted to pass the vehicle on the right which he later found out was driven by Harper. As Hunt was passing, Harper swerved abruptly to the right partially in front of Hunt's vehicle in an apparent attempt to run Hunt off the road.

12. Hunt's complaint further alleges that Hunt was able to avoid Harper's vehicle and proceeded down Veterans Pkwy where he came to a stop sign at Veterans Pkwy and Rio Wrangler Pkwy.

13. Hunt's complaint further alleges that Harper's vehicle then pulled up behind Hunt's vehicle, and Harper exited his car and rapidly approached Hunt's vehicle. Hunt started to exit his vehicle and inquire what Harper's problem was.

14. Hunt's complaint further alleges that Hunt and Harper engaged in a scuffle as Hunt was emerging from his vehicle. During the scuffle, Hunt fell in such a way that he fractured his ankle.

15. Hunt's complaint further alleges that Harper was positively identified as the Defendant because he dropped his car keys at the scene of the altercation and was forced to call the Reno Police after his vehicle sounded an alarm indicating that the key fob was away from the vehicle.

16. Hunt's complaint further alleges that Hunt's wife drove him to Renown Medical Center Emergency Room where he received treatment for his injuries sustained in the scuffle. Hunt's injuries consisted of head trauma, severe bruising to the face, lacerations to his face and body, and a displaced left ankle.

17. Hunt's complaint further alleges that Hunt developed a Methicillin-resistant Staphylococcus aureus (MRSA) infection as a direct result of an operation to his ankle at Carson/Tahoe Medical Center. This resulted in further complications and treatment, including

surgeries and loss of tissue and bone. Hunt has incurred medical expenses in excess of Five Hundred-Forty Thousand Dollars ($540,000) thus far.

18. Hunt's complaint further alleges that Hunt incurred permanent partial loss of use of his ankle in a percentage as yet undetermined by medical experts, as well as possible limb amputation.

19. Hunt's complaint further alleges that Hunt was forced to use eight weeks of personal vacation time as a result of his injuries.

20. Hunt's complaint further alleges that Hunt continues to endure substantial pain and suffering as a result of his injuries.

21. Hunt's complaint further alleges that Harper knew or should have known that engaging in a physical altercation could cause physical harm to either party.

22. Hunt's complaint further alleges that Harper in fact proximately caused severe injury to Hunt during the physical altercation between them.

23. Hunt's complaint further alleges that as a result of Harper's negligent actions in engaging in a physical altercation with Hunt, Hunt has incurred damages in excess of $10,000.00.

24. Hunt's complaint seeks compensatory damages, special damages, loss of income, attorney's fees and costs, and all other appropriate relief.

25. At the time of the facts alleged in Hunt's complaint, Harper was insured under an Allstate Homeowner's Policy, Policy Number 816833528 ("Homeowner's Policy") insuring real property located at 1868 Resistol Dr, Reno, NV 89521-8213.

26. The Homeowner's Policy was issued in accordance with and pursuant to Nevada law. The terms and conditions of the Homeowner's Policy are governed under the laws of the State of Nevada.

27. The Homeowner's Policy insuring agreement provided coverage for Harper as

follows:

> SECTION II – Family Liability and Guest Medical Protection
> COVERAGE X
> Family Liability Protection
>
> Losses We Cover Under Coverage X:
> Subject to the terms, conditions and limitations of this policy, **we** will pay damages which an **insured person** becomes legally obligated to pay because of **bodily injury** or **property damage** arising from an **occurrence** to which this policy applies, and is covered by this part of the policy.
>
> **We** may investigate or settle any claim or suit for covered damages against an **insured person**. If an **insured person** is sued for these damages, **we** will provide a defense with counsel of **our** choice, even if the allegations are groundless, false, or fraudulent. **We** are not obligated to defend any suit or pay any claim or judgment after **we** have exhausted **our** limit of liability.
>
> COVERAGE Y
> Guest Medical Protection:
>
> Losses We Cover Under Coverage Y
> **We** will pay the reasonable expenses incurred for necessary medical, surgical, x-ray and dental services; ambulance, hospital, licensed nursing and funeral services; and prosthetic devices, eye glasses, hearing aids, and pharmaceuticals. These expenses must be incurred and the services performed within three years from the date of an **occurrence** causing **bodily injury** to which this policy applies, and is covered by this part of the policy.
>
> Each person who sustains a **bodily injury** is entitled to this protection when that person is:
> 1. on the **insured premises** with the permission of an **insured person**; or
> 2. off the **insured premises**, if the **bodily injury**:
> a) arises out of a condition on the **insured premises** or immediately adjoining ways;
> b) is caused by the activities of an **insured person** or a **residence employee**;
> c) is caused by an animal owned by or in the care of an **insured person**; or
> d) is sustained by a **residence employee**.

28. The Homeowner's Policy defines "bodily injury" and "occurrence" as follows:

> **Bodily Injury** – means physical harm to the body, including sickness or disease, and resulting death, except that **bodily injury** does not include:
> a) any venereal disease;

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b) Herpes;
c) Acquired Immune Deficiency Syndrome (AIDS);
d) AIDS Related Complex (ARC);
e) Human Immunodeficiency Virus (HIV);

or any resulting symptom, effect, condition, disease or illness related to a) through e) listed above.

Occurrence – means an accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in **bodily injury** or **property damage**.

29. In addition, the Homeowner's Policy contains an "intentional acts" exclusion which states as follows:

C. Losses We Do Not Cover Under Coverage X and Coverage Y:
Coverage under **Coverage X-Family Liability Protection** will be excluded for **bodily injury** and **property damage** and coverage under **Coverage Y-Guest Medical Protection** will be excluded for **bodily injury** as follows:

1. **We** do not cover any **bodily injury** or **property damage** intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, any **insured person**. This exclusion applies even if:

a) such **insured person** lacks the mental capacity to govern his or her conduct;

b) such **bodily injury** or **property damage** is of a different kind or degree than intended or reasonably expected; or

c) such **bodily injury** or **property damage** is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such **insured person** is actually charged with, or convicted of a crime.

30. The conduct alleged in Hunt's complaint is entirely "intentional" in nature based on the fact that Harper intentionally and voluntarily exited his vehicle and proceeded to rapidly approach Hunt to engage him in a physical altercation. Thus, Harper's actions do not constitute an "occurrence" as that term is defined in the Homeowner's Policy.

31. The allegations set forth in Hunt's complaint were "intentional" in nature. Based on the "intentional act" exclusion above, Harper is not entitled to coverage and/or a defense

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or indemnification under the Homeowner's Policy.

32. In addition to the Homeowner's Policy, Harper was also insured under an Allstate Automobile Policy, Policy No. 816834608 ("Automobile Policy") at all times relevant to this litigation. The policy was issued in accordance with and pursuant to Nevada law. The terms and conditions of the policy are governed under the laws of the State of Nevada. In relevant part, the Automobile Policy provided coverage as follows:

> **Automobile Liability Insurance: Bodily Injury – Coverage AA**
> **Property Damage – Coverage BB**
>
> **We** will pay damages an insured person is legally obligated to pay because of:
> 1) **bodily injury** sustained by any person, and
> 2) damage to, or destruction of, property.
>
> Under these coverages, **your** policy protects an insured person from liability for damages arising out of the ownership, maintenance or use, loading or unloading of an insured **auto**.

33. The conduct alleged in Hunt's complaint establish that at the time of the incident, Harper was not: (1) operating the vehicle; (2) loading the vehicle; (3) unloading the vehicle; (4) engaging in any activity essential to the use or maintenance of the vehicle. Thus, Harper is not entitled to coverage and/or a defense or indemnification under the Automobile Policy.

34. In addition, the Automobile Policy contains an "intentional act" exclusion which states as follows:

> **EXCLUSIONS – What is Not Covered**
> **We** will not pay for any damages an insured person is legally obligated to pay because of:
>
> 6. **bodily injury** or property damage which may reasonably be expected to result from the intentional acts of an insured person or which are in fact intended by an insured person to the extent that the limits of liability for this coverage exceed the limits of liability required by the Nevada financial responsibility law.

35. The conduct alleged in Hunt's complaint is entirely "intentional" in nature based

on the fact that Harper intentionally and voluntarily exited his vehicle and proceeded to rapidly approach Hunt to engage him in a physical altercation. Thus, Harper's actions do not constitute an "occurrence" as that term is defined in the Automobile Policy.

36. The allegations set forth in Hunt's complaint were "intentional" in nature. Based on the "intentional act" exclusion above, Harper is not entitled to coverage and/or a defense or indemnification under the Automobile Policy.

FIRST CLAIM FOR RELIEF

(Declaratory Relief)

37. Allstate repeats and re-alleges the allegations contained in Paragraphs 1 through 35 as though fully set forth herein.

38. Allstate has reserved all of its rights under the Homeowner's Policy and Automobile Policy alleged against Harper by Hunt.

39. Therefore, an actual dispute and judicial controversy exists between Allstate and Harper concerning the application and interpretation of the terms and conditions of the Homeowner's Policy and Automobile Policy.

40. An actual case or controversy exists between Allstate and Harper as to whether Hunt's claims are covered under the terms and conditions of the Homeowner's Policy and Automobile Policy.

41. Therefore, Allstate is entitled to an Order from this Court declaring the rights, duties, and obligations of the parties under the Homeowner Policy.

WHEREFORE, Allstate prays for the following:

(1) An Order from the Court declaring that the Allstate Homeowner Policy, Policy Number 816833528 is valid and enforceable;

(2) An Order from the Court declaring that the Allstate Automobile Policy, Policy Number 816834608 is valid and enforceable;

(3) An Order from the Court declaring that the allegations raised in Hunt's underlying complaint do not afford coverage to Harper under the Homeowner Policy nor the Automobile Policy;

(4) An Order from the Court declaring that Allstate is not required to indemnify or defend Harper for the claims of Hunt set forth in the underlying case filed in the Second Judicial District Court in and for the County of Washoe, Case No. CV14-02334;

(5) For attorney's fees and costs incurred herein; and

(6) For such other and further relief as the Court deems just and proper.

DATED this 4 day of October, 2016.

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